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**OCT 29 1997**

Office of the Secretary  
Federal Communications Commission  
Washington, D.C. 20554

FCC MAIL ROOM

Re: Comments of the City of Seattle In the Matter of Preemption of State and Local  
Zoning Restrictions on the Siting, Placement and Construction of Broadcast Station  
Transmission Facilities

**MM Docket No. 97-182**  
**FCC 97-296**

The City of Seattle opposes the relief requested by petitioners. The petition is speculative in its unsupported assumption that there will be adverse impacts on the deployment of DTV caused by local zoning regulations. Moreover, the petition goes far beyond the minimum intrusion into state and local sovereignty that would be needed were there documented cases of local governmental actions that prohibited the timely deployment of DTV.

The record does not suggest that broadcasters have been unable to site their facilities in the United States due to local regulatory intransigence or any other reason. On the contrary, the record shows near universal service by the broadcast industry. Consequently, there is no reason to believe that a broad preemption of local government authority is warranted. Any relief provided by the Commission on the basis of the “public benefit” of the timely DTV deployment should be limited as narrowly as possible to meet that objective. The need to get DTV to the public quickly is understood. But the Commission should not allow this need to be used as an excuse to gut essential local regulations that are necessary to protect the public.

Preemptory action should be taken only when the final action of the governmental body has created an unreasonable barrier to establishment of DTV. State and local governments should be given a reasonable period of time to reach decisions. In Washington State, the Legislature recently completed an extensive regulatory reform process and identified 120 days as a reasonable time period for permit decisions in administrative actions, after the proponent has submitted a complete application. Nothing in the Commission's timeline for implementation of DTV in the Seattle market is threatened by this local timeline if broadcasters act promptly and with competence. In

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any event, the time frames proposed by the petitioner are impractical unless local government were to abdicate totally its responsibility to its citizens.

The petition identified other areas for preemption regarding construction standards, emissions, lighting and marking. The City of Seattle would not oppose preemption where the FAA has established required tower marking and lighting for aircraft safety, as our regulations already defer to this agency. However, the petitioners' proposal regarding construction standards is excessively burdensome on local governments to show that its standards are only based on safety. Local governments generally adopt model codes and rely on national bodies for engineering standards and guidance, and should not have to defend these standards which are determined in a rigorous process.

Rather, the proponent of the tower should bear the burden of proving that the governmental unit's regulation is unreasonable and constitutes a barrier to deployment of the broadcast service. For example, setting a higher than normal wind speed factor for a very tall tower, provided that the wind speed has been documented in the region, may be reasonable, even if lower speeds are generally used for the design and construction of structures due to the relative risk of a failure.

In response to Section IV, Request for Comments, we offer the following:

### **Time periods**

The State of Washington requires administrative decisions (e.g., variances, administrative conditional uses) to be issued within 120 days of the filing of a complete application. That time period applies to local governmental actions only, not to the time it may take applicants to respond to correction notices or to revise their plans. Meeting the petitioners' proposed time frames would require total abdication of responsibility for the public's health, safety and welfare. Applications for broadcast towers in commercial zones require a City Council decision, which can take nine months. However, the City of Seattle choose to encourage broadcast towers in downtown and industrial zones by making those decisions administrative, and therefore subject to the 120 day limit.

We believe that the DTV schedule, created by the FCC, can be met with Seattle's rules left intact, as long as there is timely submittal of plans. Our regulations provide for public notice and opportunity for comment, determination of compliance with development standards, and time to understand consequences of the proposal. Local governments should not be punished or held responsible either for the FCC's imposition of what some may consider unreasonable deadlines, nor for the industry's lack of timely application submittal.

## **Preemption**

The FCC should not preempt local governments' ability to fulfill their mission of protection of the public health, safety and welfare. FCC preemption, if applied at all, should only occur where a community has completely prohibited broadcast towers. The City of Seattle spent a great deal of time in the late 1980s and early 1990s studying telecommunication issues and creating a reasonable balance between the needs of the broadcasters and legitimate concerns of citizens. We do not believe that that extraordinary effort should be thrown out in a nationwide preemption, which should only be a tool of last resort. Any preemption must be the minimum required to allow the service to be initiated and at most should be limited to construction of DTV transmission facilities. With regard to preemption over local regulation for aesthetic purposes, please remember that aesthetics is not just "make it look pretty." Aesthetic impacts concern how broadcast towers (1100 feet above mean sea level in Seattle) influence and change the character of a neighborhood. Our towers are almost all in residential neighborhoods, and the proximity of these structures to residential dwellings is of concern. Again, each jurisdiction must be allowed to resolve its unique issues, which a national-wide preemption cannot possibly address appropriately.

## **Dispute resolution**

The concept of an alternate dispute resolution mechanism has merit. Mediation before preemption is preferable, where necessary. However, the standards for the mediator **must** give deference to state and local decision makers in the broad siting decisions of locational criteria, aesthetics, and construction standards, provided that the local decisions are not unreasonable or prohibit provision of DTV services.

Please contact Matthew Lampe by e-mail: [Matt.Lampe@ci.seattle.wa.us](mailto:Matt.Lampe@ci.seattle.wa.us) or at (206) 684-0504 if you have questions regarding these comments.

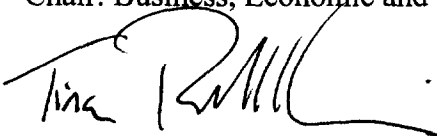
Sincerely,



Jan Drago

President, Seattle City Council

Chair: Business, Economic and Community Development Committee



Tina Podlowski

Chair: Technology and Telecommunications Committee

cc: Mayor Norman B. Rice